

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

|   |   |                                     |
|---|---|-------------------------------------|
| COMMONWEALTH OF                             | ) |                                     |
| PENNSYLVANIA and STATE OF                   | ) |                                     |
| NEW JERSEY,                                 | ) |                                     |
|   | ) |                                     |
| Plaintiffs,                                 | ) |                                     |
| v.  | ) | Civil Action No. 2:17-cv-04540 (WB) |
|   | ) |                                     |
| JOSEPH R. BIDEN, in his official            | ) |                                     |
| capacity as President of the United States; | ) |                                     |
| <i>et al.</i> ,                             | ) |                                     |
|   | ) |                                     |
| Defendants.                                 | ) |                                     |
| _____                                       | ) |                                     |

**STATUS REPORT**

On August 2, 2021, the Court entered an order staying this case and instructing Federal Defendants to file a status report on or before October 29, 2021 and every 90 days thereafter. ECF No. 281. And on January 3, 2022, the Court issued an order directing that the case remain stayed, and that Federal Defendants file a status report on or before January 27, 2022, and every 90 days thereafter. ECF No. 283. Federal Defendants report the following:

1. This case involves a challenge to final rules that the defendant agencies issued in 2018 expanding the prior religious exemption to the contraceptive coverage requirement and creating a new moral exemption. *See* Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the ACA, 83 Fed. Reg. 57,536 (Nov. 15, 2018); Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the ACA, 83 Fed. Reg. 57,592 (Nov. 15, 2018).
2. This Court entered a preliminary injunction; the judgment was reversed and remanded by the Third Circuit on August 21, 2020, following the Supreme Court's decision in *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020).

3. On July 30, 2021, Federal Defendants filed a motion asking the Court to stay the case to permit them to evaluate the issues presented by this litigation, as well as their regulatory and policy options. ECF No. 279. The Court had previously granted two other similar motions made by Federal Defendants. *See* ECF Nos. 271, 275.

4. On August 2, 2021, the Court granted Federal Defendants' motion and entered an order staying the case. ECF No. 281. In that order, the Court also instructed Federal Defendants to file a "status report on or before October 29, 2021, and every 90 days thereafter." *Id.*

5. On August 16, 2021, Federal Defendants announced that "[t]he Departments [of Health and Human Services, the Treasury, and Labor] intend to initiate rulemaking within 6 months to amend the 2018 final regulations and obtaining public input will be included as part of the Departments' rulemaking process." CMS.Gov, Frequently Asked Questions, Affordable Care Act Implementation FAQs (Set 48) (Aug. 16, 2021) (*available at* [https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs#Affordable\\_Care\\_Act](https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs#Affordable_Care_Act)).

6. On January 3, 2022, the Court issued an order directing that the case remain stayed, and that Federal Defendants file a status report on or before January 27, 2022, and every 90 days thereafter. ECF No. 283. On January 9, 2024, following a status conference, the Court dismissed the parties' pending merits briefs without prejudice, and maintained the present stay. ECF No. 311.

7. In April 2023, Federal Defendants notified the Court that they had published a notice of proposed rulemaking in February 2023 that would "amend regulations regarding coverage of certain preventive services under the Patient Protection and Affordable Care Act, which requires non-grandfathered group health plans and non-grandfathered group or individual health insurance

coverage to cover certain contraceptive services without cost sharing.” U.S. Dep’t of Treasury, U.S. Dep’t of Labor, & U.S. Dep’t of Health & Human Servs., Coverage of Certain Preventive Services Under the Affordable Care Act, 88 Fed. Reg. 7236 (Feb. 2, 2023), *available at* <https://federalregister.gov/documents/2023/02/02/2023-01981/coverage-of-certain-preventive-services-under-the-affordable-care-act>. The comment period for the proposed rule closed on April 3, 2023. Federal Defendants received over 44,000 comments to the proposed rule. Review and assessment of the thousands of comments to the proposed rule is ongoing.

8. The Office of Management and Budget periodically issues a Unified Agenda of Regulatory and Deregulatory Actions (Unified Agenda), which reports on administrative agencies’ planned regulatory actions. The Unified Agenda represents Federal Defendants’ statement of their expectations regarding the timeline for rulemaking. The Fall 2023 Unified Agenda, which is the most recent Unified Agenda as of this filing, states that Federal Defendants expect to publish the Final Rule in August 2024. Executive Office of the President of the United States, Office of Information and Regulatory Affairs, Office of Management and Budget, HHS/CMS, Coverage of Certain Preventive Services Under the Affordable Care Act, *available at* <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=0938-AU94>.

9. Federal Defendants propose that the case remain stayed, and that Federal Defendants continue to file status reports every 90 days to apprise the Court of the status of the rulemaking and their position on the need for a continued stay.

10. Plaintiffs have advised that they do not oppose keeping the litigation in its current posture.

Dated: January 22, 2024

Respectfully submitted,

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*/s/ Daniel Riess*

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